

REMARKS

Claims 1-5 are pending. Claims 6-26 were withdrawn. No new matter has been entered. Claims 1-5 remain in the application.

Claims 1-26 stand subject to a four-way restriction requirement under 35 U.S.C. § 121. In the response filed on December 14, 2005, Applicant elected Group I without traverse, but failed to elect a species. Applicant elects Group I and additionally elects species “a,” that is, Claims 1-5 read on the embodiment of FIGURE 1A. However, upon reconsideration, Applicant rescinds the original election without traverse and herein makes the foregoing election *with* traverse for the following reasons.

The Restriction Requirement does not properly identify why there is no generic claim or the specific species claims. MPEP 803(II); 806.04(d) (“In general, a generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim.”) Nor does the Restriction Requirement properly explain why the species are independent or distinct. *See*, MPEP 806.04 (“Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct.”) The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. MPEP 808.01. Instead, the Restriction Requirement merely states that “As necessitated by the applicant’s new amended claims 1-5, an election of species is required.” A mere statement of conclusion is inadequate. *Id.*; *see*, MPEP 809.02(a), form para. 8.01 (“The application contains claims directed to the following patentably distinct species [1]. The species are independent or distinct because [2].”) (emphasis in original).

Moreover, every requirement to restrict must provide the reasons why each invention *as claimed* is either independent or distinct from the other(s); and the reasons why there would be a serious burden on the examiner if restriction is not required. MPEP 803(I); 808. Specifically, a requirement for restriction is permissible if there is a patentable difference between the species as claimed and

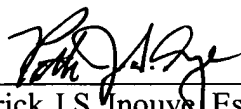
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Docket No. 015.0405.US.CON

there would be a serious burden on the examiner if restriction is not required.
MPEP 808.01(a). No such showing has been made for the species claims as to
patentable differences or as to separate classifications, separate status in the art
when the claims are classifiable together, or that different fields of search are
5 necessary. Accordingly, a *prima facie* showing for restricting Claims 1-5 to a
specific species has not been made and reconsideration and withdrawal of the
restriction requirement is respectfully requested.

Claims 1-5 are believed to be in a condition for allowance and a Notice of
Allowance is earnestly solicited. Please contact the undersigned at (206) 381-
10 3900 regarding any questions or concerns associated with the present matter.

Respectfully submitted,

15 Dated: April 6, 2006

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